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No. 404

In the Supreme Court of the United States

OCTOBER TERM, 1955

OFFUTT HOUSING COMPANY, A CORPORATION, PETITIONER

v.

COUNTY OF SARPY AND ROBERT M. EBY, TREASURER OF THE COUNTY OF SARPY, NEBRASKA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

SIMON E. SOBELOFF,
Solicitor General,
CHARLES K. RICE,
Acting Assistant Attorney General,
HILBERT P. ZARKY,
ERWIN A. GOLDSTEIN,
Attorneys,
Department of Justice,
Washington 25, D. C.

scope of the Congressional waiver. No attempt to segregate the lessee's actual interest was made in assessing the taxes. Rather, the whole value of the property, title to which was in the United States, served as the measure and basis for the tax. In no event can Section 6 of the Leasing Act be construed as consenting to local taxation of *property owned by the United States*, which, wherever located, is immune from any form of State or local taxation in the absence of Congressional consent. *United States* v. *Allegheny County*, 322 U.S. 174. Similarly, an assumed permission to tax the interest in property created in the lessee by the Wherry Act would not support respondents' attempt to tax the household appliances located on the Offutt project, which were wholly-owned by petitioner independently of any provision of the Wherry Act. *Surplas Trading Co.* v. *Cook*, 281 U.S. 647.

Respondents' argument that the United States acquired only sham title to the buildings for purposes of avoiding local property taxes is plainly without merit. The lease between petitioner and the Government expressly provides that the buildings and improvements erected (R. 138) "shall be and become, as completed, real estate and part of the leased land, and public buildings of the United States * * *". Even if this provision was inserted in the lease solely to advance the purpose of the Wherry Act by avoiding local property taxes, it would not affect the validity of the lease. *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 122. The United States is free to conduct its affairs in the

manner best suited to its purposes, and the intent to acquire and hold ownership of the buildings is unmistakable. Moreover, the Government's ownership of the property was in no sense merely technical, but rather was consonant with the important interests retained by it in the project. The United States prescribed the maximum rentals (R. 93, 136), determined what persons could occupy the apartments (R. 34), assumed most of the financial risk by insuring the mortgagee (R. 133), and performed most of the necessary governmental services by providing police and fire protection (R. 137-138), sewerage and water service (R. 103-104, 110-111), and access roads (R. 110). If anything, the interest of the United States is greater, not less, than that of the typical lessor. The construction put upon the lease by the court below is, of course, not binding upon this Court, which has the final authority in determining the meaning and effect of contracts to which the United States is a party. *S.R.A., Inc.* v. *Minnesota*, 327 U.S. 558, 564; *Kern-Limerick, Inc.* v. *Scurlock, supra.*

CONCLUSION

For the reasons set forth above, as elaborated upon in petitioner's brief, the judgment of the court below should be reversed.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.
CHARLES K. RICE,
Acting Assistant Attorney General.
HILBERT P. ZARKY,
ERWIN A. GOLDSTEIN,
Attorneys.

MARCH 1956.

APPENDIX

Statistical Summary of Air Force Wherry Act Projects

There are 106 housing projects at 57 Air Force installations located in 26 States and one possession (Puerto Rico); these projects include a total of 37,623 family housing units. Of the total of 106 projects, 14 projects at 9 Air Force installations (involving 5,243 units) are located off-base on privately-owned land. The remaining 92 projects are located on-base and completely on Government-owned land, at 51 Air Force installations, and include 32,380 family units.

At present, there are 62 on-base projects at 34 locations (involving 22,341 units) being taxed, and the amount of tax ranges from $28.00 per unit per month, or $336 per unit per annum, down to $.50 per unit per month; the average amount of tax is approximately $12.00 per unit per month.

There are now 30 on-base projects (involving 10,039 units) not being taxed and the tenants do not have an allowance for taxes in their monthly rentals.

Of the 92 on-base projects, 32 projects at 16 locations in 12 States (involving 11,588 units) are now affected by litigation; at three locations the litigation was settled by agreement.

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